

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In re: Guidant Corp. Implantable Defibrillators  
Products Liability Litigation

MDL No. 1708  
(DWF/AKB)

This Document Relates to All Actions

PLAINTIFFS' STATEMENT  
CONCERNING DISPUTED AGENDA  
ITEMS FOR JANUARY 24, 2006  
CASE STATUS CONFERENCE

**Disputed Issues**

**1. Establishment of a Trial Plan / Discovery Schedule / Bellwethers.**

Plaintiffs seek that this Court entertain a specific, concrete proposal for setting priority trial dates for the resolution of the injunctive, equitable and declaratory relief sought, including determination of Guidant's liability for the costs and expenses related to failure or replacement of the subject devices, and for bellwether trials on death, injury, and emotional distress damage claims. Defendants resist. Under Federal Rule of Civil Procedure 65, the Court has the undoubted authority to move towards a trial of injunctive and declaratory relief matters. Such a trial would concentrate on determining Guidant's legal duties towards Plaintiffs who have brought the lawsuits before this Court. The establishment of such a schedule – which accords with Guidant's view that this MDL Court should have precedence over other civil litigation brought against it – is appropriate and necessary. Without such a concrete schedule, the history of this case has shown little progress will occur and that diversions and distractions, such as trials in state courts, may come to consume the Court's attention. The Court has unquestioned jurisdiction over Guidant and should exercise it to ensure that the greatest number of Plaintiffs' claims will be heard expeditiously and efficiently before this MDL Court.

Plaintiffs' proposal begins with the establishment of a trial date and, as counsel suggested on December 2, 2005, it is submitted that October 16, 2006 (nine months from now) is a reasonable trial date. To get to such a trial, discovery needs to be completed and at Guidant's request, last week, Plaintiffs' counsel provided Guidant with a "top" priority list of document requests. (*See* Copy of Letter Attached as Exhibit "A".) Inasmuch as Guidant's counsel told the Court in December that its team of attorneys to work on documents numbers in the dozens, Plaintiffs submit that these top priority requests should all be completed within 30 days from the date of this status conference. The complete set of priority requests, identified on October 7, 2005, then could be completed within 60 days, and the final document requests within 90 days.

Plaintiffs also envision the concurrent scheduling of certain bellwether trials of individual Plaintiffs' claims, and have begun the process of obtaining from Plaintiffs' counsel information about their cases, the first and necessary step in presenting a specific bellwether proposal to Defendants and the Court.

This trial plan will most expeditiously and efficiently determine the threshold matters presented before this MDL Court and the nature and viability of any claims being asserted. Such a trial plan can, and should, come before the intensive, but procedural, issues of class certification (*see* below). Since the first recalls at issue were made in June 2005, completing the necessary trials by the end of the year will materially advance the litigation, so that all the matters before this Court may be resolved promptly.

## **2. Discovery Matters.**

Plaintiffs have already submitted a proposal to the Court seeking the establishment of a weekly telephone conference call to address discovery. Guidant does not believe that judicial involvement is necessary. Plaintiffs believe it clearly is necessary, inasmuch as, since the

December 16, 2005 status conference, new issues have continually arose as to which the parties have reached deadlocked positions. For instance, just last week Guidant informed Plaintiffs that they would be unable to schedule any more depositions until issues regarding the Texas state court cases were resolved, including a deposition plaintiff has just noticed of an individual regarding medical advisories. In addition, since that status conference, document discovery has proceeded in fits and starts, with 1,2 million pages of new documents produced (*See* Exhibit B (summary of productions to date.)) That number of pages is misleading as the vast majority of documents consist of work project files for three defibrillators and the documents for the first of these have proven difficult to read given an unexplained folder structure and unusable hyperlinks; and the second and third project files are incomplete. Notwithstanding, all of the documents produced thus far by Guidant have been distributed for review to Plaintiffs' counsel in the pending cases and more counsel are awaiting documents for review.

A weekly call, Plaintiffs respectfully submit, would best move the process along and could alleviate issues before they arise and become the subject of motions to the Court, such as the (withdrawn) motion regarding the topics at the 30(b)(6) deposition taken last week or the availability of witnesses for depositions.

### **3. Schedule for Class Certification / Master Complaint(s).**

Plaintiffs' position on the lack of necessity of the filing of a master complaint or complaints and scheduling class certification matters was set out at pages 1-3 in Plaintiffs' [December 2, 2005] Submission Concerning Disputed Issues Raised in the Joint Case Management Report and Agenda for December 16, 2005 Case Management Conference. In short, such scheduling should follow upon the completion of meaningful discovery so as to

permit informed decision-making by the Court, as is recognized in the sections of the Manual for Complex Litigation Plaintiffs cited.

Plaintiffs would add that their proposal for trial, set out above, for declaratory and injunctive relief can precede any motions for class certification, thereby permitting the substantive matters to proceed more expeditiously. A trial plan for declaratory and injunctive relief and bellwether trials is the most efficient manner in which the issues presented by the case – including whether any or what class or classes should be certified – can be focused.

Respectfully submitted,

Dated: January 18, 2006

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